

## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# **Fiscal Note**

**Drafting Number:** LLS 21-0639 Date: February 23, 2021 Bill Status: **Prime Sponsors:** Sen. Kirkmeyer Senate SVMA Fiscal Analyst: Will Clark | 303-866-4720 Will.Clark@state.co.us **Bill Topic:** PROMULGATION OF PUBLIC HEALTH RULES & ORDERS Summary of □ TABOR Refund ☐ State Revenue **Fiscal Impact:** □ Local Government □ State Transfer ☐ Statutory Public Entity The bill requires the State Board of Health and the Department of Public Health and Environment to follow the State Administrative Procedures Act when promulgating rules and issuing public health orders. The bill will increase state expenditures beginning in FY 2021-22 and thereafter. **Appropriation** No appropriation is required. Summary: **Fiscal Note** This fiscal note reflects the introduced bill.

### **Summary of Legislation**

The bill clarifies that rules promulgated by the State Board of Health and the Department of Public Health and Environment (CDPHE) follow the State Administrative Procedures Act (APA). It also requires any order issued by the board or CDPHE that has the same general applicability of a promulgated rule to follow the APA.

### **Background**

Status:

Emergency Rules. Under the APA, an emergency rule may be adopted without a hearing and with less than 20 days notice, or without any notice, becomes effective on adoption and expires automatically after 120 days. After adopting emergency rules, an agency requests an opinion from the Attorney General's Officer regarding whether the rule presents any apparent constitutional or legal deficiency in its form or substance. After the Attorney General issues an opinion, the rule is filed with the Secretary of State (SOS) and the Office of Legislative Legal Services (OLLS) and published in the Colorado Register.

**Permanent Rules.** Prior to adopting permanent rules, an agency must file notice of proposed rulemaking to be published in the Colorado Register. The agency makes the proposed rules available for a minimum of 20 days prior to holding a rulemaking hearing. After adopting permanent rules, the agency requests an opinion from the Attorney General's Office regarding whether the rule presents any apparent constitutional or legal deficiency in its form or substance. After receipt of the opinion, the agency files the adopted rule with the SOS and the OLLS and the rule is published in the Colorado Register. The rule becomes effective a minimum of 20 days after publication and is then published in the Colorado Code of Regulations.

The State Board of Health promulgates rules related to Colorado public health under the APA.

### State Expenditures

The bill will increase costs in the CDPHE on an ongoing basis to issue public health orders that have the same general applicability of a promulgated rule, following the APA. The number of orders that meet this criterion depends on a number of factors and has not been estimated. Costs to follow the APA when issuing an emergency order are estimated at \$15,675 and 0.1 FTE per rulemaking to be paid from the General Fund. For rules that will be in place beyond 180 days, a permanent rulemaking hearing will be required with an additional cost of approximately \$28,000 and 0.2 FTE. Due to the uncertainty of how many additional rulemaking hearings will be held annually, the fiscal note assumes that these costs will be addressed through the annual budget process.

#### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

#### **State and Local Government Contacts**

Governor Information Technology

Law Public Health and Environment